



Hogan Lovells US LLP
390 Madison Avenue
New York, NY 10017
T +1 212 918 3000
F +1 212 918 3100
www.hoganlovells.com

September 2, 2022

By Electronic Mail

Honorable Lorna G. Schofield
United States District Judge
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

**Re: *Chan v. Chinese-American Planning Council Home Attendant Program, Inc.*,
15-cv-09605 (LGS)**

Dear Judge Schofield:

We represent the defendant, Chinese-American Planning Council Home Attendant Program, inc. (“CPC”) in the above-captioned matter. Pursuant to your Memo Endorsement dated August 2, 2022 (Dkt. No. 136), we jointly write with Plaintiffs’ counsel, Michael Taubenfeld of Fisher Taubenfeld and Tito Sinha of TakeRoot Justice, to apprise you of: (1) the nature of the case; (2) any (i) motions that have been made and decided, (ii) motions that any party seeks or intends to file, and (iii) other applications that are expected to be made; and (3) any other information that may be helpful in resolving the action.

The nature of the case is as follows: This matter arises out of claims raised by Plaintiffs, current and former employees of CPC, under various wage and hour statutes. This Court compelled an arbitration of Plaintiffs’ claims, including their class claims. The arbitration took place and resulted in two awards issued by Arbitrator Martin Scheinman, both of which have been confirmed by Judge Koeltl. The confirmation of both awards are on appeal and have been consolidated by the Second Circuit. Order, *1199 SEIU United Healthcare Workers E. v. PSC Cmty. Servs.*, No. 21-631-cv (L) (2d Cir. Aug. 17, 2022).

Motions that have been made in this case are as follows: Plaintiffs originally filed their claims on March 11, 2015, in state court. After Plaintiffs amended their causes of action to include claims under the Fair Labor Standards Act, CPC removed the matter from state court to this Court on December 8, 2015 (Dkt. No. 1). On December 15, 2015, CPC moved to compel arbitration of the matter and stay proceedings pending arbitration (Dkt. No. 5). On January 19, 2016, while CPC’s motion to compel was pending, Plaintiffs sought a temporary restraining order attempting

Hogan Lovells US LLP is a limited liability partnership registered in the District of Columbia. “Hogan Lovells” is an international legal practice that includes Hogan Lovells US LLP and Hogan Lovells International LLP, with offices in: Alicante Amsterdam Baltimore Beijing Birmingham Boston Brussels Colorado Springs Denver Dubai Dusseldorf Frankfurt Hamburg Hanoi Ho Chi Minh City Hong Kong Houston Johannesburg London Los Angeles Luxembourg Madrid Mexico City Miami Milan Minneapolis Monterrey Munich New York Northern Virginia Paris Perth Philadelphia Rome San Francisco São Paulo Shanghai Silicon Valley Singapore Sydney Tokyo Warsaw Washington, D.C. Associated Offices: Budapest Jakarta Riyadh Shanghai FTZ Ulaanbaatar. Business Service Centers: Johannesburg Louisville. Legal Services Center: Berlin. For more information see www.hoganlovells.com

to preclude CPC from communicating with putative class members (Dkt. No. 21), which Judge Forrest denied on January 21, 2016 (Dkt. No. 36).

On February 3, 2016, Judge Forrest granted CPC's motion to compel arbitration and stay this matter pending arbitration (Dkt. No. 42). Plaintiffs moved for reconsideration on February 17, 2016 (Dkt. No. 43), which the Court denied on April 8, 2016 (Dkt. No. 47).

On September 29, 2017, Judge Forrest dismissed this matter *sua sponte* (Dkt. No. 64). On October 12, 2017, CPC moved for reconsideration and asked the Court to restore the case to the docket as a stayed matter pending resolution of the arbitration (Dkt. No. 65).¹ The motion was unopposed, and Judge Forrest granted CPC's requested relief by reopening this matter but staying it pending the result of the arbitration (Dkt. No. 69).

The arbitration ended when Arbitrator Scheinman issued the Second Award on February 25, 2022. CPC then requested that this Court dismiss the case (Dkt. No. 126) since the matter had been stayed pending the arbitration, which had been completed. Plaintiffs opposed dismissal at that time and asked the Court stay this matter until Judge Koeltl ruled on cross-petitions to confirm and vacate the Second Award (Dkt. No. 132).

On June 24, 2022, Judge Koeltl confirmed the Second Award (Dkt. No. 133). CPC again sought dismissal, which Plaintiffs opposed by seeking a stay until the conclusion of an appeal of Judge Koeltl's confirmation decision (Dkt. No. 135). On August 2, 2022, the Court denied Plaintiffs' request for a continued stay (Dkt. No. 136).

CPC's position is as follows: This case should be closed and the matter should be dismissed now that Judge Koeltl has confirmed both Arbitration Awards (Dkt. No. 133). Judge Forrest stayed this action "pending resolution of the arbitration," (Dkt. No. 69) and the arbitration is now resolved. Consistent with this Court's Order denying Plaintiffs' request for a continued stay on August 2, 2022 (Dkt. No. 136), it is now time to dismiss this case in its entirety as this Court had previously done (Dkt. No. 64).

¹ Prior to *Katz v. Cellco*, 794 F.3d 341 (2d Cir. 2015), courts routinely dismissed cases after compelling arbitration. However, by dismissing the case at this early juncture, the courts were making such orders immediately appealable so the Second Circuit told courts to stay the proceedings rather than dismiss until after the arbitration award. It was because of *Katz*, among other reasons, that CPC asked the Court to reopen the case for the sole purpose of staying it until the Arbitration concluded.

Honorable Lorna G. Schofield

- 3 -

September 2, 2022

Accordingly, CPC respectfully requests the Court to close this matter and dismiss the case with prejudice. CPC has conferred on this matter with Plaintiffs' counsel, who do not oppose CPC's request to dismiss this case with prejudice.

Respectfully submitted,

/s/ Kenneth Kirschner

Partner

kenneth.kirschner@hoganlovells.com@hoganlovells.com

D 212 918 3260

cc: Counsel to All Parties (by ECF)